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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/757,374	01/14/2004	Vito James Carlucci	884.0217USU	3611

7590 07/20/2006

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EXAMINER
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GRAVINI, STEPHEN MICHAEL

ART UNIT	PAPER NUMBER
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3749

DATE MAILED: 07/20/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/757,374

Applicant(s)

CARLUCCI ET AL.

Examiner

Stephen Gravini

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on 29 June 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☐ Claim(s) 1-15 and 17-23 is/are pending in the application.
- 4a) Of the above claim(s) 10-15, 17-20, 22 and 23 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) 1-9 and 21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

***Election/Restrictions***

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-9 and 21, drawn to a subcombination apparatus, classified in class 34, subclass 97.
- II. Claims 10-15 and 17-20, drawn to a subcombination apparatus, classified in class 34, subclass 99.
- III. Claims 22-23, drawn to a combination, classified in class 34, subclass 100.

The inventions are distinct, each from the other because of the following reasons:

Inventions of group I or III and group II are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct if they do not overlap in scope and are not obvious variants, and if it is shown that at least one subcombination is separately usable. In the instant case, subcombination of groups I or III has separate utility such as a heater or heating source being independently activatable which is not a limitation in the independently claimed group II invention. It would be burdensome upon the Office to search these independent and distinct inventions in making a determination of patentability. See MPEP § 806.05(d).

Inventions of group I and group III are related as combination and subcombination. Inventions in this relationship are distinct if it can be shown that (1) the combination as claimed does not require the particulars of the subcombination as claimed for patentability, and (2) that the subcombination has utility by itself or in other

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combinations (MPEP § 806.05(c)). In the instant case, the combination as claimed does not require the particulars of the subcombination as claimed because the independently claimed combination found in group I does not require a hair dryer or a secondary heating source generating an amount of heat exclusive from a primary heating source. The subcombination has separate utility such as limited to hair drying without secondary heating source exclusivity.

Because these inventions are independent or distinct for the reasons given above and have acquired a separate status in the art in view of their different classification, restriction for examination purposes as indicated is proper.

Claims 10-15, 17-20, and 22-23 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on June 29, 2006.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1 and 21 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. Those claims contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventors, at the time the application was filed, had possession of the claimed invention. In both those claims, the recitation "wherein

said primary heating source and said secondary heating source are independently activatable” is not considered enabling to those skilled in the art based on the originally filed application. That recitation is considered new matter because from applicants’ originally filed application page 3 lines 9-12 it specifies “ [an] object of the present invention to provide an improved hairdryer that allows an operator to selectively apply radiant energy and/or heated fluid air to one or more strands of hair as desired via a control interface.” Selectively applying radiant energy and/or heated fluid air does not reasonably convey to one skilled in the art that the heating sources are independently activatable because user selection would not teach independent activation. Also in applicants’ originally filed application page 7 lines 1-20 it specifies that a user may selectively activate/deactivate primary and secondary heaters and “[i]t is noted that controls 24, 26, 28 need not separately control the various features of hairdryer 1, but rather any one or more controls may operate to control any two of more operating functions associated with hairdryer 1.” One or more controls operating to control any two or more operating functions does not reasonably convey to one skilled in the art the newly claimed feature of “independently activatable” because at least one control must control at least two operating functions such that independent activation would not be possible. In fact, nowhere in the originally filed application is there mention of the recitation “independently.”

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1 and 21 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Both those claims recite "independently activatable" which is considered indefinite because it is not clear how independent activation is achieved.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

***Claim Rejections - 35 USC § 102***

Claims 1-5 and 7-9 are rejected under 35 U.S.C. 102(b) as being anticipated by Slingo (US 6,481,116). Examination of claims considered non-enabling and indefinite will be examined under the assumption that those rejections can be overcome. Slingo is considered to disclose the claimed invention comprising:

a hair dryer body **10** having a handle portion **30** and a head portion **20**, said head portion having a blower **40** for generating airflow;

a primary heating source **62** for providing heat to said airflow; and

a secondary heating source **100** for selectively providing radiant energy to said airflow as desired wherein said primary heating source and said second heating source are independently activatable as discussed on columns 2 and 3 of that reference wherein electrical means **32** operates as a primary heating source and fan activation of heat flow operates as a secondary heating source because a separate switch operates each heating source such that both are independently activatable which also is considered to anticipate the claimed control interface enabling an operator to at least

activate and/or deactivate said secondary heating source. Slingo is also considered to disclose the claimed primary convection heater heating source at column 1 lines 52-60, secondary infrared heater heating source at column 1 line 31, primary and secondary heating source individual and/or together operation as discussed in columns 2 and 3, and air ingress/egress opposite ends as shown in figure 1.

***Claim Rejections - 35 USC § 103***

Claim 21 is rejected under 35 U.S.C. 102(b) as being anticipated by Doljack et al. (US 4,450,496). Current Office practice does not afford the preamble patentable distinction unless it breaths life and meaning into the body of the claim. Doljack is considered to disclose the invention comprising:

a body, disclosed in column 1 line 15 as the invention, having at least a first portion, disclosed in column 1 line 16 as the power circuit, and a second portion, disclosed in column 1 line 16 as the power circuit,

said first portion accommodating at least a primary heating source **23** connected to a power source **17** and a secondary heating source **23a**,

said second portion accommodating a control interface **18** for allowing an operator to control a heating effect of said primary heating source and/or said secondary heating source, wherein said second heating source is a positive temperature coefficient heater with a doped ceramic, and wherein said positive temperature coefficient heater is connected to said power source at column 8 lines 7-60 and at column 9 beginning at line 12 with the doped ceramic feature being taught at column 4 lines 19-56, wherein the disclosed separate thermal resistors coupled in

parallel is considered to inherently anticipate the claimed primary and secondary heating sources because both act to provide heating as claimed.

***Claim Rejections - 35 USC § 103***

Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Slingo in view of Carson (US 5,640,781). Slingo is considered to anticipate the claimed invention, except for the claimed PTC ceramic heater. Carson, another dryer, is considered to disclose a PTC ceramic heater at column 4 lines 12-27. It would have been obvious to one skilled in the art to combine the teachings of Slingo with the PTC ceramic heater, considered to be disclosed in Carson for the purpose of allowing a self regulating secondary heater by using a material that sharply increases resistance without a corresponding temperature increase, inherent to PTC ceramic heaters.

Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Slingo in view of Polaert (US 5,790,749). Slingo is considered to anticipate the claimed invention, except for the claimed self-regulating secondary heater with separately adjustable blower airflow effects or heating source effects. Polaert, another dryer, is considered to disclose a self-regulating secondary heater with separately adjustable blower airflow effects or heating source effects at column 3 line 45 through column 4 line 6. It would have been obvious to one skilled in the art to combine the teachings of Gell with the self-regulating secondary heater with separately adjustable blower airflow effects or heating source effects, considered to be disclosed in Polaert for the purpose of allowing a more flexible heating temperature and airflow volume to prevent hair damage in hair drying equipment.



Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over Slingo in view of Doljack et al. (US 4,450,496). Slingo is considered to disclose the invention as rejected above except for the claimed second portion accommodating a control interface for allowing an operator to control a heating effect of said primary heating source and/or said secondary heating source, wherein said second heating source is a positive temperature coefficient heater with a doped ceramic, and wherein said positive temperature coefficient heater is connected to said power source. Doljack, another dryer, is considered to disclose a second portion accommodating a control interface **18** for allowing an operator to control a heating effect of said primary heating source and/or said secondary heating source, wherein said second heating source is a positive temperature coefficient heater with a doped ceramic, and wherein said positive temperature coefficient heater is connected to said power source at column 8 lines 7-60 and at column 9 beginning at line 12 with the doped ceramic feature being taught at column 4 lines 19-56, wherein the disclosed separate thermal resistors coupled in parallel is considered to inherently anticipate the claimed primary and secondary heating sources because both act to provide heating as claimed. It would have been obvious to one skilled in the art, to combine the teachings of Slingo with the second portion accommodating a control interface for allowing an operator to control a heating effect of said primary heating source and/or said secondary heating source, wherein said second heating source is a positive temperature coefficient heater with a doped ceramic, and wherein said positive temperature coefficient heater is connected to said

power source, as considered disclosed by Doljack, for the purpose of providing separately controlled heating sources.

### ***Response to Arguments***

Applicant's arguments with respect to claims 1-15 and 17-23 have been considered but are moot in view of the new grounds of rejection.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen Gravini whose telephone number is 571 272 4875. The examiner can normally be reached on normal weekday business hours (east coast time).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ehud Gartenberg can be reached on 571 272 4828. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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SMG

July 13, 2006

*Stephen Gaur*